

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

**THE WORKERS' COMPENSATION
APPEALS BOARD HAS REDUCED
THE LENGTH OF THE ADJUDICATION
PROCESS BUT DOES NOT COMPLY
WITH STATUTORY MANDATES**

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

P-435

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HAS REDUCED THE LENGTH OF THE ADJUDICATION PROCESS
BUT DOES NOT COMPLY WITH STATUTORY MANDATES

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P-435

Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the Workers' Compensation Appeals Board (WCAB). The report concludes that although the length of the adjudication process has decreased, the WCAB and the Division of Industrial Accidents, within the Department of Industrial Relations, needs to make further improvements in operations so that WCAB district offices fully comply with statutory mandates.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
INTRODUCTION	1
AUDIT RESULTS	
I THE LENGTH OF THE ADJUDICATION PROCESS HAS DECREASED	5
II THE WORKERS' COMPENSATION APPEALS BOARD IS NOT COMPLYING WITH STATUTORY MANDATES	15
III CONCLUSION AND RECOMMENDATIONS	39
RESPONSE TO THE AUDITOR GENERAL'S REPORT	
Department of Industrial Relations	45

SUMMARY

The Workers' Compensation Appeals Board (WCAB) is part of the Department of Industrial Relations' Division of Industrial Accidents (division). The WCAB has 22 district offices throughout the State. Since we last reviewed the Workers' Compensation Appeals Board in 1982, the length of the adjudication process has decreased for the samples of cases that we reviewed from 12 months to 6.6 months. Although the length of the adjudication process has decreased, WCAB district offices are still not holding workers' compensation hearings promptly.

WCAB Does Not Hold Hearings Promptly

The Labor Code requires that workers' compensation hearings be held within 30 days after they have been requested. In the four district offices that we visited, 96 percent of the conference hearings and 99 percent of the regular hearings were not held within 30 days. The average length of delay beyond 30 days for conference hearings was 1.2 months and for regular hearings, 1.3 months. The delays result in part from the division's failure to implement a standard for the number of hours that workers' compensation judges should be in hearings each week. During our previous review, the Administrative Director of the Division of Industrial Accidents and the Chairman of the WCAB stated that a reasonable standard for workers' compensation judges to be in hearings is 24 hours per week. Nevertheless, the division has not implemented this standard. For the WCAB district offices that we visited, the average number of hours that workers' compensation judges were scheduled in hearings ranged from 15.9 to 17.6 hours in one office to 23.6 to 24.8 hours in another office.

Hearing Time Is Being Wasted

Twenty-six percent of hearings we sampled were wasted because they did not take place as scheduled. Wasted hearings result because parties fail to appear at hearings, because they do not have necessary medical evidence, and because they cancel hearings at the last minute. Some district offices counteract the effect of last-minute cancellations by overbooking their hearing calendars.

A wasted hearing prolongs the adjudication process because it leads to a continuance; that is, the scheduling of another hearing on the case. However, the minutes of many hearings were too brief to permit us to evaluate the need for the continuances. The WCAB's Rules of Practice and Procedure and its Policy and Procedural Manual specify the information that should be included in hearing minutes. Fifty-one percent of the minutes for hearings that led to continuances did not comply with the WCAB's requirements.

Recommendations

The Division of Industrial Accidents should adopt a workload standard that requires workers' compensation judges to be scheduled in hearings 24 hours per week. The division should also amend the Policy and Procedural Manual to instruct presiding judges and calendar clerks to overbook their hearing calendars to compensate for last-minute cancellations. The division should monitor the district offices' hearing calendars to ensure that these recommendations are implemented. To avoid wasted hearings, the division should ensure that presiding judges are adequately screening requests for hearings. Finally, presiding judges should review the minutes of hearings prepared by workers' compensation judges to ensure that the minutes are complete and that any continuance orders specify the reason for the continuance.

INTRODUCTION

The Workers' Compensation Appeals Board (WCAB) is part of the Department of Industrial Relations' Division of Industrial Accidents. The WCAB has 22 district offices throughout the State. These district offices have two separate governing bodies. The WCAB, through its seven commissioners, exercises all judicial powers. The Division of Industrial Accidents, through its Administrative Director, controls all other aspects of the WCAB district offices. For fiscal year 1983-84, the WCAB district offices have 555.5 authorized positions.* Workers' compensation judges account for 118.5 of these authorized positions. For fiscal year 1983-84, the budget for the WCAB district offices, which is supported by the General Fund, totals approximately \$24 million.

Workers' compensation law specifies that, when an employee is injured on the job, the employer is responsible for providing necessary medical treatment. If the employee is temporarily disabled so that he or she cannot work, the employee is entitled to temporary disability payments. If the injury results in a permanent disability, the employee is entitled to compensation based on the extent of the disability and the employee's occupation and age.

*The division reports that six additional positions are used to manage the WCAB district offices.

If an injured employee or the employer and the employer's workers' compensation insurance carrier have disputes arising from work injuries, either party may apply to the WCAB district offices to have the dispute decided. The WCAB is a court of limited jurisdiction designed to handle workers' compensation issues.

SCOPE AND METHODOLOGY

The scope of our review included determining whether the WCAB district offices were adjudicating workers' compensation cases in a timely manner. To determine the length of the adjudication process and to determine if there have been delays, we reviewed a random sample of approximately 400 cases at four WCAB district offices: Los Angeles, Sacramento, San Jose, and Santa Ana. These are the same offices that we visited to compile data for our previous report, "The System for Adjudicating Workers' Compensation Disputes Can Be Accelerated Without a Budgetary Increase," Report P-045, February 1982. The sample for our previous report included 800 cases from fiscal years 1977-78 and 1978-79. For our current review, we sampled cases from fiscal years 1981-82 and 1982-83. From these cases, we determined the length of the adjudication process, the causes of delay, and the outcome of hearings. We also calculated the number of hours that hearings were scheduled for workers' compensation judges for a random sample of weeks from the 1983 hearing calendar in those district offices that we visited.

We also reviewed whether the Division of Industrial Accidents had implemented the recommendations that we made in our 1982 report. We limited our review to those recommendations directed at making the adjudication process more efficient. We interviewed staff at various levels, including the Administrative Director and the Assistant Chief of the Division of Industrial Accidents. We interviewed presiding judges to determine how hearing time was scheduled and to identify any procedures that were unique to each district office. We also interviewed workers' compensation judges to obtain information on the specific cases that we reviewed.

Finally, to analyze the staffing in the district offices, we obtained the number of authorized and filled positions for each district office for fiscal year 1983-84. We compiled workload data from the monthly statistical reports submitted by all district offices and used this data to analyze variations in workload for the positions assigned to each district office. We also identified which district offices had vacant positions and determined why these positions were vacant.

AUDIT RESULTS

I

THE LENGTH OF THE ADJUDICATION PROCESS HAS DECREASED

Since our last review of the Workers' Compensation Appeals Board (WCAB) in 1982, the length of the adjudication process has decreased for the samples of cases that we reviewed from 12 months to 6.6 months. Waiting time for hearings has also decreased. For example, the longest average waiting time for regular hearings in fiscal year 1980-81 was 7.8 months; in fiscal year 1982-83, the longest average waiting time had decreased to 4.1 months.* The Division of Industrial Accidents (division) has helped to reduce the waiting time for hearings in some WCAB district offices by requiring them to use pro tempore workers' compensation judges. Attorneys serve as pro tempore workers' compensation judges and conduct conference hearings.

The Length of the Adjudication Process Has Decreased Since the Auditor General's 1982 Report

Since we conducted our last review in 1982, the length of the adjudication process has decreased. For cases initiated by application for adjudication of claim, the length of the adjudication process has

*Waiting time for hearings refers to the time period between the date when the "Declaration of Readiness to Proceed" is filed and the date when the hearing is held.

decreased for the samples of cases that we reviewed from 12 months to 6.6 months. For cases initiated by settlements, the length of the adjudication process decreased from 2 months to 17 days for the samples of cases that we reviewed.

The Constitution of the State of California requires that the workers' compensation system accomplish justice expeditiously. Although the Constitution does not define the term "expeditiously," statutes impose specific time limits on two parts of the process. First, a hearing should be held not less than 10 days nor more than 30 days after the date that a request for hearing is received. Second, workers' compensation judges should render decisions within 30 days after the cases have been submitted to them.

The length of the adjudication process varies depending upon how the proceeding is initiated. One method involves filing an application for adjudication of claim, a form that is used to describe the injury and the disputed issues in the case. This type of case represented 60 percent of the sample for our previous report and required an average of 12 months for adjudication. These cases usually involved at least one hearing.

The other type of case involves submitting a settlement. A settlement is any disposition that is agreed upon by the parties and that resolves the disputed issues in the case without using the formal litigation process. Parties submit their settlement documents to the

workers' compensation judge for approval. This type of case, which represented 17 percent of the sample for our previous report, took an average of two months to complete.*

In our previous report, we found that the WCAB district offices could not control all the factors that influence the length of the adjudication process. The injured worker and the employer's insurance company, who are the parties to the dispute, can affect the length of the adjudication process. For example, if a case will require more than one hearing, the adjudication process will be lengthened by the amount of time that elapses before parties request another hearing. If the parties choose to settle a dispute without a hearing, they can prolong the process if they delay in negotiating and submitting the settlement. Finally, when parties need to obtain additional medical evidence during the course of the proceedings, the adjudication process can be lengthened by delays in obtaining appointments with medical specialists and by delays in receiving physicians' reports.

In our previous report, we described how a lengthy adjudication process was harmful to all parties concerned in the dispute. Delays in bringing a case to hearing can deny an injured worker needed workers' compensation benefits. A lengthy adjudication process can also slow an injured worker's convalescence and rehabilitation. Sometimes delays

*The remaining 23 percent of the sample for our previous report consisted of cases that had not yet completed the adjudication process.

cause injured workers to relinquish their rights to adjudicate their workers' compensation claims because they become discouraged by a lengthy process. A lengthy adjudication process can also adversely affect workers' compensation insurance companies, which are the defendants in most cases. For example, the cost of litigation and medical evaluations increases for insurance companies involved in lengthy cases.

The length of adjudication has decreased for the current sample of cases that we analyzed. Cases involving at least one hearing required 6.6 months to complete the adjudication process; these cases represented 45 percent of our sample. Cases resolved by settlement without any hearings represented 44 percent of our sample and required only 17 days to complete the process.* Since our review of cases for our previous report, the WCAB and the division added a requirement to the Policy and Procedural Manual that workers' compensation judges take appropriate action within 15 days after receiving a settlement. Appropriate action includes issuing orders and awards. The following table shows how the length of adjudication has decreased for the district offices in our sample.

*The remaining 11 percent of our sample was composed of cases that had not yet completed the adjudication process.

TABLE 1
AVERAGE LENGTH OF ADJUDICATION
SAMPLE OFFICES

	Cases Initiated in Fiscal Years <u>1977-78 and 1978-79</u>	Cases Initiated in Fiscal Years <u>1981-82 and 1982-83</u>
Los Angeles	15.9 months	6.0 months
Sacramento	9.6 months	6.6 months
San Jose	10.4 months	7.1 months
Santa Ana	12.7 months	6.8 months

Waiting Time for Hearings
Has Decreased Statewide

The WCAB district offices conduct two different types of hearings, conference hearings and regular hearings. A conference hearing is a proceeding that can serve four functions: it can ascertain if a case involves genuine disputes requiring resolution by the WCAB district offices; it can assist parties in resolving disputes; it can narrow the issues; and it can expedite preparation and trial if a regular hearing is necessary. The second type, a regular hearing, is a proceeding for receiving evidence. Table 2 depicts how the average waiting time for hearings has decreased since our last review.

TABLE 2
AVERAGE WAITING TIME FOR HEARINGS
RANGE STATEWIDE
(in months)

	<u>Fiscal Year 1980-81</u>		<u>Fiscal Year 1982-83</u>	
	<u>Low</u>	<u>High</u>	<u>Low</u>	<u>High</u>
Conference Hearings	1.1	4.7	0.6	2.9
Regular Hearings	1.4	7.8	0.7	4.1

The following table displays the degree to which waiting time for hearings has decreased in the offices that we visited.

TABLE 3
AVERAGE WAITING TIME FOR HEARINGS
SAMPLE OFFICES
(in months)

	<u>Fiscal Year 1980-81</u>		<u>Fiscal Year 1982-83</u>	
	<u>Conference Hearings</u>	<u>Regular Hearings</u>	<u>Conference Hearings</u>	<u>Regular Hearings</u>
Los Angeles	3.7	5.4	1.7	3.8
Sacramento	4.5	7.8	0.9	1.0
San Jose	3.3	7.0	1.5	3.8
Santa Ana	3.2	3.4	1.8	1.9

The Administrative Director of the Division of Industrial Accidents attributes part of the decrease in the waiting time for hearings to changes in the Rules of Practice and Procedure; these changes became effective July 1, 1981. One of these changes affected the "Declaration of Readiness to Proceed," the form that parties submit to request a hearing. The revised form includes a clause that requires the parties filing the "Declaration of Readiness to Proceed" to state under penalty of perjury that they are ready to proceed to a regular hearing. A false declaration by an attorney or representative may result in contempt proceedings. This change was designed to prevent parties from being unprepared at hearings. Any objection to the declaration must be filed within 10 days; if an objection is not filed, the WCAB district office assumes that the defending party is ready to proceed and sets a hearing date.

According to the division's administrative director, the effect of these rule changes may be suggested by the decrease in the number of hearings requested. From the end of fiscal year 1980-81 to the end of fiscal year 1982-83, the number of applications for adjudication filed with the WCAB district offices increased by almost 14,600. However, during this period, requests for hearings decreased by nearly 33,600. The administrative director explained that because fewer hearings were requested, demand for time on the hearing calendar was reduced. As a result, waiting time for hearings decreased.

Use of pro Tempore Judges
Has Decreased Waiting Time for
Hearings in Some Offices

Our previous review of the hearing calendars in the district offices found that the average waiting time for hearings exceeded 30 days in all district offices during fiscal year 1980-81. As a result, we recommended that the Department of Industrial Relations implement a pilot program to use attorneys serving as pro tempore workers' compensation judges to conduct conference hearings on cases. Workers' compensation judges relieved of the responsibility to conduct conference hearings would then have more time for conducting regular hearings.

The division has implemented this recommendation. The program began in the Van Nuys office starting in September 1982. The assistant chief of the division says that the use of pro tempore workers' compensation judges in the Van Nuys office helped to reduce the backlog in the hearing calendar from 6.1 months in September 1982 to 1.8 months in December 1983.

In August 1982, the division required all WCAB district offices whose calendars for regular hearings were filled four or more months in advance to implement a program using pro tempore workers' compensation judges. In February 1984, the division further required any district office with a vacant workers' compensation judge position to implement this program. District offices could obtain an exemption from this requirement if they did not have sufficient clerical staff to administer the program.

As part of our current audit, we reviewed the status of the calendars for regular hearings for all the district offices and identified all the district offices having vacant workers' compensation judge positions. We conclude that ten of the district offices should have pro tempore workers' compensation judge programs. Six of these district offices are currently using pro tempore workers' compensation judges. According to the assistant chief of the division, one other district office has a program and three others are preparing programs that should be operational within 60 days. He also stated that two other district offices with vacant workers' compensation judge positions should have programs but have been exempted from the requirement because they do not have enough clerical staff.

By using pro tempore workers' compensation judges, district offices are able to increase the time available on their regular hearing calendars and thereby decrease the waiting time for hearings. For example, one district office that uses pro tempore workers' compensation judges has reduced the waiting time for hearings from 4.0 months in October 1982 when it began the program to 1.5 months in December 1983.

II

THE WORKERS' COMPENSATION APPEALS BOARD IS NOT COMPLYING WITH STATUTORY MANDATES

The Labor Code requires that hearings be held within 30 days after they are requested. However, the WCAB district offices that we visited were not holding 96 percent of the conference hearings and 99 percent of the regular hearings within 30 days. Several factors contribute to this noncompliance. Some district offices were not fully scheduling their hearing calendars, and one district office had vacant workers' compensation judge positions, which limited the amount of calendar time available. We also found that the incidence of wasted hearings (hearings that do not take place) increased from 16 percent of the hearings sampled for our previous report to 26 percent of the hearings during our current review. Although the total number of wasted hearings increased, wasted hearings caused by parties' failure to appear at hearings decreased. However, wasted hearings caused by parties' not having needed medical evidence persists. This problem suggests that presiding judges or their designees are not properly screening "Declarations of Readiness to Proceed" when scheduling cases for hearings. Furthermore, parties are still cancelling hearings at the last minute. Some district offices compensate for this problem, however, by overbooking their hearing calendars. One of the district offices that we visited did not overbook its hearing calendar; as a result, its workers' compensation judges were not fully scheduled in hearings.

The WCAB Still Does Not Hold Hearings Promptly

Despite the decrease in the time required to adjudicate workers' compensation cases, the Division of Industrial Accidents needs to further improve the operation of the WCAB district offices so that they fully comply with the statutory mandate that hearings be held within 30 days after they are requested. In the remaining sections of this report we review the status of those problems we identified in our previous report, and we review the extent of vacant positions in the district offices and the effect that these vacancies have on their operations.

District Offices Are Still Not Holding Hearings Within 30 Days

Although the waiting time for hearings has decreased, most district offices are still not consistently complying with the Labor Code requirement that hearings must be held within 30 days after they are requested. The following table summarizes the degree to which the district offices in our sample did not comply with this provision in both our earlier report and our current review.

TABLE 4
PERCENT OF HEARINGS NOT HELD
WITHIN 30 DAYS AND AVERAGE LENGTH OF DELAY
SAMPLE OFFICES

	<u>Cases Initiated in Fiscal Years 1977-78 and 1978-79</u>	<u>Cases Initiated in Fiscal Years 1981-82 and 1982-83</u>
Conference Hearings		
Percent not in compliance	98%	96%
Average length of delay beyond 30 days	3.0 months	1.2 months
Regular Hearings		
Percent not in compliance	96%	99%
Average length of delay beyond 30 days	4.0 months	1.3 months

Delays in holding hearings can have significant repercussions because most cases involve more than one hearing. Some cases in the sample for our previous report had as many as seven hearings. During our current review, we also found some cases with as many as seven hearings. Unless a case has an emergency hearing, it receives the first available date on the hearing calendar; this date can be several months in the future.

One reason for the delays is that the division is not enforcing the Labor Code requirement that hearings be held within 30 days after they are requested. In fact, the WCAB's Rules of Practice and Procedure contradict the Labor Code provisions. The Rules of Practice and

Procedure permit district offices to issue a notice of hearing up to 30 days after receiving the request for hearing. The rules also specify that the notice of hearing must be received 10 days before the scheduled hearing date. For example, a district office could issue a notice of hearing 30 days after the hearing was requested. The hearing would have to be scheduled for a date at least 10 days later to comply with the requirement to provide notice 10 days before the hearing. Thus, the hearing would be scheduled for a date at least 40 days after it was requested, not 30 days as required by the Labor Code. The Administrative Director of the Division of Industrial Accidents and the Chairman of the WCAB suggested changing the Labor Code to specify that hearings must be held not less than 10 days nor more than 30 days after the expiration of the 10-day period to file an objection to the "Declaration of Readiness to Proceed." This revision would make the time periods in the Labor Code and in the Rules of Practice and Procedure conform.

Workers' Compensation Judges
Need To Be Scheduled for More
Hearing Hours per Week

In our 1982 report, we found that workers' compensation judges could be scheduled for more hearing hours per week. During our current review, we found that in three of the four district offices that we visited, workers' compensation judges could still be scheduled for more hours of hearings. The department did not implement the recommendations in our previous report aimed at solving this problem. We also found that

the division does not monitor the scheduling practices of the district offices or the number of hours that district offices are scheduling hearings.

In our previous report, we said that the division did not have a standard for the number of hours that workers' compensation judges should be scheduled to hear cases each week. The Administrative Director of the Division of Industrial Accidents and the Chairman of the WCAB stated that 24 hours per week is a reasonable standard. In our previous report, we reviewed the number of hours that workers' compensation judges were scheduled in hearings in the district offices that we visited. We found that not one of the district offices was scheduling workers' compensation judges in hearings 24 hours per week.

We recommended that the Department of Industrial Relations require workers' compensation judges to conduct hearings 24 hours per week. The department has not implemented this workload standard, however. The assistant chief of the division explained that his division has not implemented a statewide standard for hearing calendars because the conditions differ among the district offices. In some district offices, he explained, the attorneys who practice workers' compensation law are likely to settle many cases instead of requiring workers' compensation judges to render decisions. In such district offices, workers' compensation judges can conduct hearings for more than 24 hours per week because they have fewer decisions to prepare. However, the assistant chief could not think of a district office in which the

conditions would permit workers' compensation judges to conduct hearings less than 24 hours per week.

Although the division has not required that workers' compensation judges conduct a specified number of hearing hours each week, it did amend its Policy and Procedural Manual on November 4, 1981, to require that district offices schedule hearings in the mornings and in the afternoons five days per week. This policy also allows presiding judges to schedule time for workers' compensation judges to prepare decisions on cases.

As part of our current review, we selected a random sample of weeks from the hearing calendars at the district offices that we visited to determine whether they had improved their scheduling practices. For our previous report, we analyzed the entire hearing calendar and we reported the actual average number of hours scheduled per week. Because our current review involved a random sample of weeks from the 1983 hearing calendar, we project a range for what the average would be for the entire hearing calendar. Table 5 presents the results of our current review and compares the findings to those of our previous report.

TABLE 5

**AVERAGE NUMBER OF HOURS THAT
WORKERS' COMPENSATION JUDGES
WERE SCHEDULED IN HEARINGS**

	<u>Average Hours per Week Calendar Year 1980</u>	<u>Average Hours per Week Calendar Year 1983</u>
Los Angeles	22	22.0 to 23.2
Sacramento	20	15.9 to 17.6
San Jose	20	16.9 to 17.9
Santa Ana	21	23.6 to 24.8

We recommended in our previous report that the Department of Industrial Relations amend its Policy and Procedural Manual to instruct presiding judges and calendar clerks to place high priority on scheduling hearings in time slots made available when hearings are cancelled. The Policy and Procedural Manual has not been amended. However, the division and the WCAB did issue a directive on May 24, 1983, to all its workers' compensation judges stating that "Calendar time is our most valuable commodity; it should not be wasted." The directive instructed workers' compensation judges to act immediately on requests for continuances and on requests to take cases off the calendar so that calendar time could be filled with another case. Apparently, this directive was not effective in solving the problem because calendar clerks were still not fully scheduling time slots made available by cancellations in three of the four offices that we visited.

Although the Santa Ana office has improved its scheduling of hearings, Los Angeles, Sacramento, and San Jose still have not improved. In Los Angeles, the hearing calendar was not fully scheduled during 1980 because some workers' compensation judges were participating in a special program that required them to have short schedules. This special program has since been eliminated and it did not contribute to the deficiencies in the 1983 hearing calendar. The other reason that the hearing calendar was deficient in 1980 was that the calendar clerk was not filling time slots that had been cancelled. Although the calendar clerk informed us during our current review that she does schedule new hearings in cancelled time slots, we found that the deficiencies in the 1983 hearing calendar can be traced in part to unfilled cancellations.

In 1982, we reported that Sacramento was not meeting the 24-hour-per-week standard because it was not scheduling hearings on Friday afternoons and because some workers' compensation judges were participating in a special program that entailed fewer hearing hours per week. The Sacramento office has solved these two problems by adopting a policy of scheduling hearings on Friday afternoons and by eliminating the special program. Sacramento's hearing calendar for 1983 is also deficient but for a different reason. The presiding judge was ill during part of 1983 and was not present to supervise the calendar clerk. The calendar clerk did not always schedule cases in time slots made available by cancellations and she did not fully schedule all the available hearing time on some days.

In San Jose, the deficient hearing hours in the 1980 hearing calendar occurred because the district office was not scheduling hearings on Friday afternoons. When we completed our previous report, we were informed by WCAB management that the San Jose office had changed its scheduling practices and was scheduling hearings on Friday afternoons. In reviewing the 1983 hearing calendar, however, we found that the shortfall in the number of hours scheduled on the hearing calendar is still caused by the district office's failure to schedule hearings on Friday afternoons. The presiding judge explained that attorneys like to take depositions on Friday afternoons. Additionally, the calendar clerk was not rescheduling cases in cancelled time slots in some instances.

We encountered two types of cancellations during our review of hearing calendars. One type of cancellation occurs sufficiently in advance of the hearing date so that a district office can reschedule the time slot with another case. The other type of cancellation occurs too close to the hearing date so that the district office would not have sufficient time to serve a notice of hearing if it rescheduled in the cancelled time slot. Some of the shortfalls in hearing hours result from last-minute cancellations, which the district offices would not have been able to reschedule. The Santa Ana district office, however, effectively combats last-minute cancellations by overbooking its hearing calendar. Even though hearings are cancelled at the last minute, the Santa Ana district office still has a fully scheduled hearing calendar, according to the results of our review.

The underlying cause of unscheduled hours on the hearing calendars in the WCAB district offices can be traced to the division. Although it did amend the Policy and Procedural Manual to require that hearings be scheduled on Friday afternoons, the division does not actually monitor either the scheduling practices of the district offices or the number of hours that district offices are scheduling hearings. For example, the assistant chief of the division was not aware that the San Jose office was not scheduling hearings on Friday afternoons.

If district offices such as Los Angeles and San Jose adhered to the division's policy and required that the hearing calendars have 24 hours per week scheduled for each workers' compensation judge, they could further reduce the delays in scheduling cases for hearings. In Sacramento, however, a different situation prevails. For the most part, the Sacramento office is complying with the statutory mandate that hearings be held within 30 days after requested. If the Sacramento office scheduled its workers' compensation judges for 24 hours of hearings per week, it could actually maintain the current status of its hearing calendar with one less workers' compensation judge. For calendar year 1983, the district office had seven workers' compensation judges conducting hearings an average as high as 17.6 hours per week, yielding approximately 123 hearing hours per week. Currently, the Sacramento office has six workers' compensation judges conducting hearings. If the staff were reduced to five workers' compensation judges conducting hearings 24 hours per week, the Sacramento office would be scheduling 120 hearing hours per week, a figure very close to the number of hearing

hours conducted by the seven workers' compensation judges who did not work under a fully scheduled hearing calendar.

Vacant Positions Contribute
to Delays in Holding Hearings

One of the causes of delays in holding hearings is the number of vacant positions in some offices. Five of the 22 district offices had regular hearing calendars that were scheduled nearly 60 days or more in advance. These 5 district offices each had at least one vacant workers' compensation judge position, and a higher than average number of applications for adjudication of claim per judge. We reviewed the reasons that these positions remained vacant and we conclude that the division has taken all the necessary steps to fill as many vacant positions as it can within its budgetary limitations.

In January 1983, the division, including the WCAB district offices, had 31 vacant positions; this figure represents 3.6 percent of its 861.9 authorized positions. By March 1984, 94.75 (11.5 percent) of the division's 824.4 authorized positions were vacant. During that same period, vacancies in the WCAB district offices went from 17 to 61.5. Vacant workers' compensation judge positions increased from 5 in February 1983 to 17.5 as of the end of March 1984, when the WCAB district offices had 118.5 authorized positions.

The division has not filled some of its vacant positions in the WCAB district offices for fiscal year 1983-84 because, based on the

division's budget figures, the WCAB district offices must hold vacant approximately 42 positions to stay within the personnel budget. The average salary, excluding benefits, of a workers' compensation judge during fiscal year 1983-84 is approximately \$51,000; the average salary for a clerical position is approximately \$14,000. Consequently, to remain within the personnel budget for the district offices, the division decided to try to keep clerical positions fully staffed while leaving some workers' compensation judge positions unfilled. This decision to fill clerical positions was based on the division's judgment that clerical staff were needed to "keep the paper flowing."

There are several reasons why the division has had to hold authorized positions vacant in the WCAB district offices in order to meet its budget. The department's budget analyst stated that the division holds some district office positions open to pay for hiring staff at salaries above the entry level. He said that the division holds these positions open because the budget does not provide money to hire new staff above entry level. The assistant chief of the division told us that the division has had to hire some legal secretaries for WCAB district offices at salaries above the entry level in San Francisco and Los Angeles to compete in the labor market. He also stated that the division has hired some workers' compensation judges at salaries above the entry level because they were transferring from other state agencies.

According to the department's budget analyst, the division has had to keep positions vacant in the WCAB district offices to finance a

portion of some unexpected cost increases. The budget signed by the Governor for fiscal year 1983-84 deleted increases for inflation in operating expenses and equipment and increases for merit salary adjustments that had been included in the budget adopted by the Legislature. Furthermore, the division paid the equivalent of 2.8 percent of the cost of its salaries for workers' compensation benefits for staff in the WCAB district offices in fiscal year 1983-84. The division had not budgeted for these workers' compensation costs in fiscal year 1983-84.

Finally, the statewide hiring freeze imposed by the Governor in January 1983 also prevented the division from filling vacancies that occurred during fiscal year 1983-84. As a result, the division began to identify vacancies it wanted to fill in the WCAB district offices as early as August 1983. In January 1984, the division informed the Department of Finance that vacancies in critical positions were causing a "crisis in workload."

To counteract the effects of vacancies above the number required for the division to remain within its personnel budget for fiscal year 1983-84, between December 1983 and February 1984, the division sought and obtained approval from the Department of Finance for exemptions from the statewide hiring freeze. The division reports that 52 exemptions were approved. In February, the Department of Finance exempted the Department of Industrial Relations from the statewide hiring freeze. The Department of Industrial Relations then granted the division

authority to fill positions vacated after February 1, 1984. Subsequently, the division had obtained authorization from the Department of Industrial Relations to hire 32 staff to replace personnel who left after February 1, 1984.

Since the beginning of 1984, the division has obtained exemptions from the hiring freeze to fill five vacant judge positions. It has filled two of these positions on a permanent basis and two on a temporary basis. One position was vacant as of April 21, 1984. The assistant chief of the division told us that the division has had difficulty filling workers' compensation judge positions because the current hiring list is over four years old. The division intends to fill the remaining three positions with permanent staff when a new list becomes available after July 1, 1984.

As mentioned earlier, the WCAB district offices had 61.5 vacancies in various positions as of the beginning of April 1984. It has obtained authority to fill 20 of these positions, leaving approximately 42 vacancies for the remainder of fiscal year 1983-84. These vacancies are necessary to stay within their budget. Based on an early draft of the hiring plan for the WCAB district offices for fiscal year 1984-85, we estimate that the WCAB district offices will have 113.5 authorized workers' compensation judge positions, 5 positions less than it had for fiscal year 1983-84. The loss of positions results from the Governor's mandate that departments reduce staff by 3 percent for fiscal year 1984-85. The Department of Finance has recently requested that the

Legislature restore four of these five workers' compensation judge positions for the fiscal year 1984-85 budget.

For fiscal year 1984-85, the division could fill as many as 106 workers' compensation judge positions out of 117.5 authorized positions. The Department of Industrial Relations estimates that the WCAB district offices will have approximately 34 vacancies for fiscal year 1984-85.

Hearing Time Is Being Wasted

The WCAB's Rules of Practice and Procedure state that parties in a dispute are expected to submit for decision at a single hearing all matters in controversy. In addition, they are expected to produce at that hearing all necessary evidence, including witnesses, medical reports, and other material considered essential in proving a party's claim or defense. In our previous report, we found that parties were not complying with this requirement because they were scheduling hearings when they were not prepared to present all necessary evidence. In some instances, the parties did not even attend the hearing that they requested, thus wasting hearing time.

During our previous audit, the WCAB adopted changes to its Rules of Practice and Procedure that it thought would solve the problem of wasted hearings. We recommended that the Department of Industrial Relations evaluate the effectiveness of these rule changes one year after

their implementation. We further recommended that if the rule changes did not significantly reduce the number of wasted hearings, the WCAB should propose legislation empowering it to impose sanctions on parties who fail to appear for hearings or who appear but are not prepared. Although the department has not performed the evaluation, the Division of Industrial Accidents does maintain certain statistics that management feels demonstrate that the rule changes have been effective.

During our current review, the incidence of wasted hearings was 26 percent, up from the 16 percent that we found in our previous report. Even though the percentage of wasted hearings has increased, one of the causes of wasted hearings has been abated significantly. In our previous report, we found that 42 percent of the wasted hearings were wasted because either one or all of the parties to a case did not appear at the hearing. Only 18 percent of the hearings were wasted for this reason in our current review.

The Chairman of the WCAB and the Administrative Director of the Division of Industrial Accidents attribute the decrease in parties' failure to appear for hearings to the contempt powers of the workers' compensation judges. They stated that a workers' compensation judge's threat to cite an attorney for contempt is usually enough to change the attorney's behavior.

In discussing the power of contempt with workers' compensation judges, however, we found that some judges were not sure of the extent of

their contempt powers. Two workers' compensation judges reported that although their biggest problem is getting the attorneys to appear at hearings, they would not cite absent attorneys for contempt because they do not think they have the power to do so.

Another cause of wasted hearings that we identified in our previous report was last-minute cancellations of hearings. We found that parties would often cancel the hearing within 15 days of the hearing date. The incidence of last-minute cancellations in the sample of cases that we reviewed for our previous report was 26 percent; the incidence dropped slightly to 25 percent in the current review.

Last-minute cancellations may not necessarily result in wasted hearings if the district offices are overbooking the hearing calendars. For instance, the Los Angeles and Santa Ana offices overbooked their hearing calendars in anticipation of parties' cancelling the hearing for some reason. Consequently, the workers' compensation judges may still be left with a full hearing calendar for the day despite the cancellation of some of the scheduled hearings. In instances when all parties scheduled for hearings appear for their hearings, these offices adjust their workers' compensation judges' schedules through various administrative means to permit all hearings to take place. In San Jose, the new presiding judge began overbooking his office's hearing calendar in October 1983. Until that time, hearing time was being wasted because of last-minute cancellations. Unlike the Los Angeles, Santa Ana, and San Jose district offices, the Sacramento office does not overbook its

hearing calendar. Thus, when a hearing is cancelled at the last minute, the hearing time may be wasted.

A third significant cause of wasted hearings that we found in both our previous report and our current review is that parties do not always have their medical evidence ready. This cause accounted for 16 percent of the total wasted hearings for our previous report and 17 percent for the current review. In some cases, parties fail to cancel a hearing that is scheduled to take place before the medical examination that is needed to gather evidence for the hearing. In other instances, parties may come to hearings unprepared because they have not received all of the medical reports from their physicians.

The WCAB's Rules of Practice and Procedure require that the party filing the "Declaration of Readiness to Proceed" also submit all medical reports with the declaration. All other parties are required to file their medical reports within 10 days after the "Declaration of Readiness to Proceed" is filed. The Policy and Procedural Manual for the WCAB district offices instructs presiding judges or their designees to screen the case file for completeness before scheduling the hearing. If hearings are wasted because the parties have not filed medical reports, the presiding judges are not ensuring that the case files properly include the medical reports when they schedule cases for hearings.

Continuances

Wasted hearings may result in continuances, which in turn delay the adjudication process because continuances require the setting of additional hearing dates. The Rules of Practice and Procedure explain that requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious. The Rules of Practice and Procedure also state that a continuance should be granted only upon a clear showing of "good cause." Good cause includes anything that interferes with determining the matter at the scheduled time, that denies due process, or that inhibits the workers' compensation judge from developing a complete record.

In our previous report, we found that 33 percent of the continued hearings in our sample were avoidable; that is, they were caused by parties who failed to appear or who were unprepared at the hearing. We recommended that the department monitor continuance orders to ensure that workers' compensation judges listed specific reasons for good cause and that they granted continuances only for good cause. However, the department has not established any system to monitor continuance orders. The assistant chief of the division explained that presiding judges are required to monitor workers' compensation judges' continuance orders, but the Policy and Procedural Manual does not include this requirement. The division does receive and review monthly statistics on continuances granted by all of the workers' compensation judges. On May 24, 1983, the division sent a directive to workers'

compensation judges reminding them that continuances are only to be granted for good cause and that the continuance order must include the reason that it is being granted.

Incomplete Hearing Minutes

During our current review of cases, we found that the incidence of avoidable continuances was 9 percent. However, we were unable to review many cases because the minutes were too brief to analyze. In our previous report, we found that 33 percent of the cases had avoidable continuances. We cannot necessarily conclude that this figure represents a real drop in the incidence of avoidable continuances because so many of the hearing minutes were too brief to analyze.

Both the Rules of Practice and Procedure and the Policy and Procedural Manual require that the minutes of hearings include the names of the workers' compensation judge and court reporter, the date and place of the hearing, the names of parties and attorneys attending, the names of witnesses and by whom they were called, the stipulations, the issues raised, the interim orders made, and the disposition ordered. Additionally, the Policy and Procedural Manual requires that whenever a case is continued or taken off calendar, "the express reason for granting the continuance or ordering the case off calendar must be stated in the order."

The minutes of 30 percent of the continued hearings we reviewed in our previous sample did not contain the reasons for the continuances. In our current analysis, 51 percent of the hearing minutes (76 of 149) were too brief to permit us to determine why continuances were granted or whether continuances could have been avoided. Our current review found that district offices varied in the adequacy of their continuance orders. In Santa Ana, 68 percent of the continuance orders were incomplete, 52 percent in Los Angeles, 45 percent in Sacramento, and 34 percent in San Jose.

There are other reasons besides incomplete continuance orders that hearing minutes are incomplete. We reviewed minutes for a total of 433 hearings and found that 65 (15 percent) of the minutes were not adequately documented. The hearing minutes failed to relate what parties were present, what transpired, and what the final disposition was. The minutes for some cases were blank except for the name of the workers' compensation judge, the date, and the parties present. In Los Angeles, 25 percent of the hearing minutes were inadequate, 21 percent in Santa Ana, 13 percent in Sacramento, and one percent in San Jose.

Most of the hearing minutes in our sample were recorded on a preprinted form that included boxes to be checked off. In some cases, workers' compensation judges did not even check the appropriate boxes. In discussing these problems with presiding judges in the district offices that we visited, we found that most of the presiding judges do not monitor the quality of the minutes produced by workers' compensation judges.

The minutes of a workers' compensation hearing need to be complete so that the case file discloses events that transpired at previous hearings. Some cases are reviewed by commissioners of the Workers' Compensation Appeals Board because these cases are being appealed to the WCAB for reconsideration. One deputy commissioner stated that the WCAB is concerned about the minutes' being incomplete because a case being appealed to the WCAB for reconsideration is dependent upon the official record. For example, the minutes must reflect all the issues that were raised by the parties and explain what material was introduced into evidence. The deputy commissioner said that the WCAB has received cases for reconsideration in which the official record was not at all clear.

Workers' Compensation Judges Are Not Rendering All Decisions Promptly

The Labor Code requires a workers' compensation judge to determine the rights of the parties based upon all facts involved in the controversy and to issue an award, order, or decision within 30 days after a case is submitted. In our previous report, we found that 34 percent of the decisions were not being rendered within 30 days; these decisions were completed in an average of 67 days. Seventeen percent of the time, orders and awards were not being completed within 30 days; they required an average of 75 days to complete. We recommended that the Department of Industrial Relations evaluate the validity of the statutory requirement that decisions be rendered within 30 days after a case is submitted. The assistant chief of the division said that the division

does not want to alter the requirement because it is still a desirable goal even if it cannot always be achieved.

During our current review, we found that the extent of noncompliance with the requirement to render decisions within 30 days has decreased slightly. Thirty percent of decisions were not completed within 30 days; they took an average of 61 days to complete. Ten percent of orders and awards were not rendered within 30 days; they were completed in an average of 59 days.

For our previous report, we interviewed workers' compensation judges and WCAB officials to determine why delays in rendering decisions and approving settlements were occurring. They attributed the delays to inadequate clerical support. They also mentioned that workers' compensation cases are becoming more complex and that they cannot always reach decisions within 30 days. Workers' compensation judges we spoke with during our current review expressed the same reasons for delayed decisions.

III

CONCLUSION AND RECOMMENDATIONS

Since we issued our previous report in 1982, the length of the adjudication process has decreased from 12 months to 6.6 months for cases initiated by application for adjudication of claim. Furthermore, waiting time for hearings has also decreased. Despite these improvements, the Division of Industrial Accidents could still further improve the operation of the district offices so that they comply with the Labor Code requirement that hearings be held within 30 days after they are requested. At the district offices we visited, 96 percent of the conference hearings and 99 percent of the regular hearings were not held within 30 days, but were delayed an average of 1.2 months and 1.3 months respectively.

Two main problems account for the delays in the adjudication process. First, workers' compensation judges are not being scheduled in hearings enough hours each week in three of the district offices that we visited. This problem resulted, in part, because calendar clerks did not reschedule hearings in time slots made available when other hearings were cancelled. Second, many hearings are wasted because they do not take place as scheduled. Hearings are wasted because parties fail to appear, because they do not have needed medical evidence at their hearings, and because they cancel hearings at the last minute. Some district offices counteract the effect of last-minute cancellations by overbooking their hearing calendars.

RECOMMENDATIONS

If the Division of Industrial Accidents does not intend to enforce the Labor Code provision that hearings be held within 30 days after they are requested, it should propose legislation changing the provision to a standard that it considers more workable. If the Labor Code provision is not amended, the division should amend the section in the Rules of Practice and Procedure on serving notice of hearing so that it conforms with the Labor Code provision.

To ensure that hearing calendars are fully scheduled, the division should implement the following procedures for scheduling hearing calendars:

- Adopt and enforce a standard that requires referees to be scheduled for hearings a minimum of 24 hours per week;
- Amend the Policy and Procedural Manual to instruct presiding judges and calendar clerks to place high priority on scheduling hearings in time slots made available when hearings are cancelled sufficiently in advance of the hearing date so that time remains to serve a notice of hearing;
- Amend the Policy and Procedural Manual to instruct presiding judges to monitor and record periodically how many cases are cancelled within 15 days of the scheduled hearing. The manual

should also instruct presiding judges to overbook their district offices' hearing calendars at this same rate of cancellation;

- Instruct presiding judges in district offices to supervise the work of their calendar clerks to ensure that calendar time is being fully scheduled;
- Periodically review the WCAB district offices to ensure that they are scheduling workers' compensation judges for at least 24 hours of hearings per week and that the district offices are overbooking to compensate for cancellations; and
- Develop workload standards so that it may evaluate the productivity of its workers' compensation judges. Once it has developed these workload standards and required workers' compensation judges to be scheduled in hearings at least 24 hours per week, the division should review the allocation of workers' compensation judges among its district offices and transfer positions from offices that appear to be overstaffed to offices that are understaffed.

To reduce wasted hearings caused by parties' not having needed medical evidence, the division should ensure that presiding judges are reviewing "Declarations of Readiness to Proceed" and case files before setting cases for hearing.

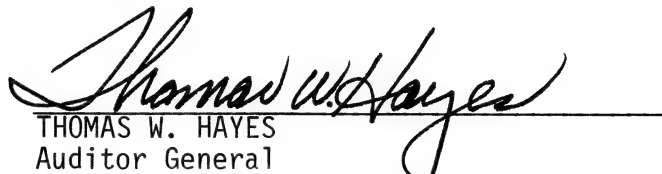
The WCAB and the division should train workers' compensation judges so that they understand the extent of and the proper use of their contempt powers.

To ensure that the minutes of hearings are adequate, the division should issue directives to the presiding judges to monitor periodically the hearing minutes of the workers' compensation judges so that they comply with the requirements of both the Rules of Practice and Procedure and the Policy and Procedural Manual.

Finally, the division should revise the Policy and Procedural Manual to require presiding judges to monitor the continuance orders of workers' compensation judges to ensure that the specific reasons for continuances appear on the order and that workers' compensation judges are granting continuances only for reasons that constitute good cause.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: May 1, 1984

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State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
SACRAMENTO

May 1, 1984

Thomas W. Hayes, Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

As you requested in your letter of April 30, 1984, attached is the Department's response to your report P-435, "The Workers' Compensation Appeals Board Has Reduced The Length Of The Adjudication Process But Does Not Comply With Statutory Mandates".

I very much appreciated the professionalism of your staff in briefing me on the contents of the report last Friday, and believe the recommendations put forward will be helpful.

Sincerely,


Ron Rinaldi
Director

jd

DEPARTMENT OF INDUSTRIAL RELATIONS

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1121 L STREET, SUITE 803

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April 30, 1984

Thomas W. Hayes, Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

The Division of Industrial Accidents' response to the Report by the Office of the Auditor General to the Joint Legislative Audit Committee, P-435, "THE WORKERS' COMPENSATION APPEALS BOARD HAS REDUCED THE LENGTH OF THE ADJUDICATION PROCESS BUT DOES NOT COMPLY WITH STATUTORY MANDATES", dated May, 1984, are contained herein. For clarity, we have taken the liberty of numbering the recommendations of the Auditor General, (Pages 40-42) and our responses are in that sequence. Because of the limited response time available (only 24 hours), the Division of Industrial Accidents may respond at some future date in more depth to the recommendations made by the Auditor General.

1. The Division of Industrial Accidents will seek amendment of the Labor Code to provide that hearings be held within 30 days after the expiration of the 15 days allowed for objection to the Declaration of Readiness, so as to bring the Labor Code and the Rules of Practice and Procedure into conformity.

In addition, the Division and the Workers' Compensation Appeals Board will make a complete review of all the Rules of Practice and Procedure for the purpose of eliminating any other conflict with existing statutes.

2. In January, 1984, the Division of Industrial Accidents began a Management Certificated Training Program for Presiding Judges, Chief Clerks, Bureau Chiefs and Area Supervisors, under the auspices of the Department of Personnel Administration. This program will be augmented by job descriptions and performance appraisal training components in June and July, 1984.

The training programs will be followed by the institution and implementation of written job descriptions with performance standards for all levels of personnel in the Division of Industrial Accidents. The performance standards will include, among other things, a reasonable standard for scheduled hours of weekly hearings by Workers' Compensation Judges. These standards will be subject to labor negotiations with all appropriate bargaining units.

3. The Division agrees with #3.

Thomas W. Hayes, Auditor General
April 30, 1984
Page 2

4. The Division agrees with #4.

5. The Division agrees with #5.

6. This will be included in job performance standards. Refer to statement on job descriptions and performance standards (#2). The Division will explore the possibility of extending the procedure of overbooking statewide.

7. Please refer to the statement on job descriptions regarding the 24-hour standard (#2). Also, the recommendation by the Auditor General that DIA review the allocation of Workers' Compensation Judges, and other personnel positions, among DIA district offices to establish more equitable staffing has already been instituted.

8. The Division agrees. This process is, at present, included as an integral part of the Presiding Judge's duties. We will reinforce its importance.

9. The Division agrees.

10. The Division agrees.

11. The Division agrees. The Division of Industrial Accidents has instituted a project to review and update its Policy and Procedural Manual. The recommendations of the Auditor General Report will be incorporated in our review process.

The Division has expanded the Judge Pro Tem Program from eight offices to all 22 district offices. This program was expanded, effective January 1, 1984. Approximately 300 attorneys are participating in the program statewide. In the calendar year 1983, approximately 5000 conferences were held by Pro Tem Judges, which is approximately three times the number held in 1982.

The long awaited on-line computer system of the Workers' Compensation Appeals Board will begin in September, 1984. At that time, the Division of Labor Statistics and Research will help the Division of Industrial Accidents identify needs and opportunities to bring the WCAB on-line. This single step should be a material factor in furthering the constitutional mandate for an expeditious and unincumbered system.

Sincerely,



Ralph Roy Ramirez
Administrative Director
Division of Industrial Accidents

RRR:RTR:jld

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps